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Department of State,
Washington, *August* 23, 1878.

To the President:

I have had the honor to receive, under date of 13th of February last, a memorial of Charles E. Sherman, Esq., of this city, in relation to certain pending claims of Spanish subjects against this government, arising under the stipulations of the last clause of the IXth Article of the Treaty of 1819, between the United States and Spain, and commonly known as the East Florida Claims, addressed to you by that gentleman, and by your direction referred to this Department.

The questions involved in the memorial of Mr. Sherman, in regard to the payment and non-payment of these claims, have been the subject of consideration for more than twenty years, resulting in opinions and reports from various officers of the Executive branch of the government; have also, on more than one occasion, been made the subject of judicial decision, and at one time and another during the long-pending controversy have elicited the opinions of some eminent lawyers, amongst whom I may mention Daniel Webster and Thomas Ewing.

Upon the receipt of the memorial and accompanying documents, I referred the matter to the law officer of this Department for examination, who, in view of the many reports and legal opinions which had already been submitted in regard to the subject, deemed an extended examination of the question at the present time superfluous, and accordingly made a brief report, a copy of which I inclose herewith.

Some years ago (1870) I was consulted, professionally, in behalf of the same interests now represented by the memorialist, Mr. Sherman, and, upon a statement of facts then laid before me, furnished the parties thus consulting

me with an opinion, which, in common with the opinions of other gentlemen obtained at various times in the same interest, is now adduced by the memorialist in support of his own views and in behalf of his clients.*

While it is true that my connection with the case as a lawyer—that being the only relation I have at any time borne to it—terminated with the giving of the opinion referred to, on the 3d of June, 1870, or soon after, I nevertheless, in view of that relation once sustained, deem it improper that I should now, as an officer of the government, and especially as a member of your Cabinet, undertake to examine the subject, pronounce an opinion on its merits, or take any part in the determination of the question as to the liability, or otherwise, of the government to the claimants.

Entertaining this view of my own duty in relation to the matter, no other course remains for me than to respectfully return the papers to the Executive office for such further direction as the President may deem proper in regard to the claim.

I have, therefore, the honor to transmit herewith the memorial of Mr. Sherman, together with the documents accompanying it, and a copy of the report of the law officer of this Department.

(Signed) WM. M. EVARTS.

[*The following is the opinion referred to.—C. E. S.:

NEW YORK, *June* 3, 1870.

I have read Mr. Carlisle's statement of his examination of the "Florida Claims," and of his opinion of their validity and justice, and of the obligation of the government promptly to meet them.

I have given to these "Florida Claims" a thorough examination, and am satisfied that their payment is imperatively demanded by justice and good faith, according to the treaty obligations for their payment, which is unquestioned, and the judicial ascertainment of the amount of the claims, which, in my judgment, precludes any uncertainty in that regard.

I certainly anticipate favorable action upon them by the Executive Departments, with which the duty rests of discharging these obligations of the government. WM. M. EVARTS.]

[COPY.]

LAW BUREAU, *March* 8, 1878.

Subject:—Memorial of Charles E. Sherman, Esquire, in behalf of claimants under the ninth article of the treaty between the United States and Spain, known as the "East Florida Claims," addressed to the President 28th of January, 1878.

This memorial, with the accompanying documents, was, by direction of the President, referred to this Department on the 13th of February ultimo.

The accompanying documents comprise ten printed pamphlets, and it is the evident intention of the memorialist to bring to the attention of the government all the facts and law relative to these particular claims.

Mr. Sherman in this purpose has, I think, been entirely successful. The claims in question have been the subject of examination, report, and opinion by various Executive and law officers of the government, superior and subordinate, for more than twenty years.

An elaborate and able report on the subject, from this bureau, was made in 1868 by Mr. Peschine Smith. I have once since reported on it more briefly.

In the documents now before me, I find the opinions of two Solicitors of the Treasury—Solicitor Clark, very full, and in favor of the payment of the claims; Mr. Talbott, still more recently, but equally decisive—in favor of their payment; Attorney-General Crittenden, three Secretaries of the Treasury, and every judge and court before whom the question has come, so far as I am able to find; and, in addition, opinions on the question from Daniel Webster, Thomas Ewing, William M. Evarts, and James M. Carlisle, all to the same effect—in favor of the claim; and I might enumerate many others.

The material facts will be found tersely, and with substantial correctness, stated in the small printed pamphlet which I append to this still more brief report. Any attempt of mine to restate the facts so often set forth is, as

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it appears to me, not only unnecessary, but might be calculated to confuse; and I respectfully submit, that no suggestion of mine could have the effect of adding to or detracting from the force of the opinions already given in favor of the payment of the claims; and it is therefore not with any such mind that I add, that, after more than one examination and a pretty thorough acquaintance with the subject, I am of the opinion that the claims in question constitute a just, legal liability against the Government of the United States, under Article IX of the Treaty of 1819 between this country and Spain.

The claims being on their face demands of citizens of a foreign government against that of the United States, the Department of State is necessarily the only proper medium of their presentation; but beyond this formality, it does not seem to me that this Department is properly chargeable with their examination, adjustment, or payment.

The act of Congress of the 3d of March, 1823, (3 Statutes at Large,) and that of June 26, 1834, provide, that when claims are judicially ascertained, &c., they shall be returned to the Secretary for adjustment. Congress, when appealed to on the subject, has said that the matter was one solely for the Executive branch of the government, and that no additional legislation on the subject was deemed necessary.

In view of these considerations, it appears to me that the further examination of the question on its merits, and the determination as to the payment of the claims, or otherwise, belong, properly, under the direction of the President, to the Secretary of the Treasury; and that further legal advice or opinion on the subject, if desired, should be sought directly from the President's legal adviser, the Attorney-General.

Respectfully submitted.

(Signed) HENRY O'CONNOR.

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(Signed) HENRY O'CONNOR.